

**ASSEMBLY BILL**

**No. 2742**

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**Introduced by Committee on Banking and Finance**

February 27, 2014

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An act to amend Section 11302 of the Business and Professions Code, to amend Section 1798.24 of the Civil Code, to amend Sections 202, 1800, 2602, 16901, and 31118 of the Corporations Code, and to amend Sections 300, 459, 4000, 4970, 4973, 4995, 14254.5, 14256, 14356, 22332, 22337, 22340.1, 30005, and 50003 of, and to add Section 1001 to, the Financial Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2742, as introduced, Committee on Banking and Finance. Business: corporations and financial services.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, including the licensure and regulation of real estate appraisers by the Bureau of Real Estate Appraisers. Existing law provides for the organization and governance of specified business entities, including corporations and partnerships. Existing law establishes the Department of Business Oversight, headed by the Commissioner of Business Oversight, and provides that the department is in charge of the execution of specified laws relating to various financial institutions and financial services, including banks, trust companies, credit unions, finance lenders, and residential mortgage lenders.

This bill would make various technical changes to these and other provisions of law, including updating cross-references and definitions in accordance with changes made to the law pursuant to Chapter 243

of the Statutes of 2011 and updating cross-references to certain federal laws and federal regulatory entities.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11302 of the Business and Professions
- 2 Code is amended to read:
- 3 11302. For the purpose of applying this part, the following
- 4 terms, unless otherwise expressly indicated, shall mean and have
- 5 the following definitions:
- 6 (a) “Department” means the Department of Consumer Affairs.
- 7 (b) “Appraisal” means a written statement independently and
- 8 impartially prepared by a qualified appraiser setting forth an
- 9 opinion in a federally related transaction as to the market value of
- 10 an adequately described property as of a specific date, supported
- 11 by the presentation and analysis of relevant market information.
- 12 The term “appraisal” does not include an opinion given by a real
- 13 estate licensee or engineer or land surveyor in the ordinary course
- 14 of his or her business in connection with a function for which a
- 15 license is required under Chapter 7 (commencing with Section
- 16 6700) or Chapter 15 (commencing with Section 8700) of Division
- 17 3, or Chapter 3 (commencing with Section 10130) or Chapter 7
- 18 (commencing with Section 10500) and the opinion shall not be
- 19 referred to as an appraisal. This part does not apply to a probate
- 20 referee acting pursuant to Sections 400 to 408, inclusive, of the
- 21 Probate Code unless the appraised transaction is federally related.
- 22 (c) “Appraisal Foundation” means the Appraisal Foundation
- 23 that was incorporated as an Illinois not-for-profit corporation on
- 24 November 30, 1987.
- 25 (d) (1) “Appraisal management company” means any person
- 26 or entity that satisfies all of the following conditions:
- 27 (A) Maintains an approved list or lists, containing 11 or more
- 28 independent contractor appraisers licensed or certified pursuant
- 29 to this part, or employs 11 or more appraisers licensed or certified
- 30 pursuant to this part.
- 31 (B) Receives requests for appraisals from one or more clients.

1 (C) For a fee paid by one or more of its clients, delegates  
2 appraisal assignments for completion by its independent contractor  
3 or employee appraisers.

4 (2) "Appraisal management company" does not include any of  
5 the following, when that person or entity directly contracts with  
6 an independent appraiser:

7 (A) Any bank, credit union, trust company, savings and loan  
8 association, or industrial loan company doing business under the  
9 authority of, or in accordance with, a license, certificate, or charter  
10 issued by the United States or any state, district, territory, or  
11 commonwealth of the United States that is authorized to transact  
12 business in this state.

13 (B) Any finance lender or finance broker licensed pursuant to  
14 Division 9 (commencing with Section 22000) of the Financial  
15 Code, when acting under the authority of that license.

16 (C) Any residential mortgage lender or residential mortgage  
17 servicer licensed pursuant to Division 20 (commencing with  
18 Section 50000) of the Financial Code, when acting under the  
19 authority of that license.

20 (D) Any real estate broker licensed pursuant to Part 1  
21 (commencing with Section 10000) of Division 4 of the Business  
22 and Professions Code, when acting under the authority of that  
23 license.

24 (3) "Appraisal management company" does not include any  
25 person licensed to practice law in this state who is working with  
26 or on behalf of a client of that person in connection with one or  
27 more appraisals for that client.

28 (e) "Appraisal Subcommittee" means the Appraisal  
29 Subcommittee of the Federal Financial Institutions Examination  
30 Council.

31 (f) "Controlling person" means one or more of the following:

32 (1) An officer or director of an appraisal management company,  
33 or an individual who holds a 10 percent or greater ownership  
34 interest in an appraisal management company.

35 (2) An individual employed, appointed, or authorized by an  
36 appraisal management company that has the authority to enter into  
37 a contractual relationship with clients for the performance of  
38 appraisal services and that has the authority to enter into  
39 agreements with independent appraisers for the completion of  
40 appraisals.

(3) An individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company.

(g) “Director” or “chief” means the Chief of the Bureau of Real Estate Appraisers.

(h) “Federal financial institutions regulatory agency” means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, ~~Office of Thrift Supervision~~, Federal Home Loan Bank System, National Credit Union Administration, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(i) “Federally related real estate appraisal activity” means the act or process of making or performing an appraisal on real estate or real property in a federally related transaction and preparing an appraisal as a result of that activity.

(j) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(k) “License” means any license, certificate, permit, registration, or other means issued by the bureau authorizing the person to whom it is issued to act pursuant to this part within this state.

(l) “Licensure” means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(m) “Office” or “bureau” means the Bureau of Real Estate Appraisers.

(n) “Registration” means the procedures and requirements with which a person or entity shall comply in order to qualify to conduct business as an appraisal management company.

(o) “State licensed real estate appraiser” is a person who is issued and holds a current valid license under this part.

(p) “Uniform Standards of Professional Appraisal Practice” are the standards of professional appraisal practice established by the Appraisal Foundation.

(q) “Course provider” means a person or entity that provides educational courses related to professional appraisal practice.

1 SEC. 2. Section 1798.24 of the Civil Code is amended to read:

2 1798.24. ~~No~~*An* agency ~~may~~ *shall not* disclose any personal  
3 information in a manner that would link the information disclosed  
4 to the individual to whom it pertains unless the information is  
5 disclosed, as follows:

6 (a) To the individual to whom the information pertains.

7 (b) With the prior written voluntary consent of the individual  
8 to whom the record pertains, but only if that consent has been  
9 obtained not more than 30 days before the disclosure, or in the  
10 time limit agreed to by the individual in the written consent.

11 (c) To the duly appointed guardian or conservator of the  
12 individual or a person representing the individual if it can be proven  
13 with reasonable certainty through the possession of agency forms,  
14 documents or correspondence that this person is the authorized  
15 representative of the individual to whom the information pertains.

16 (d) To those officers, employees, attorneys, agents, or volunteers  
17 of the agency that has custody of the information if the disclosure  
18 is relevant and necessary in the ordinary course of the performance  
19 of their official duties and is related to the purpose for which the  
20 information was acquired.

21 (e) To a person, or to another agency where the transfer is  
22 necessary for the transferee agency to perform its constitutional  
23 or statutory duties, and the use is compatible with a purpose for  
24 which the information was collected and the use or transfer is  
25 accounted for in accordance with Section 1798.25. With respect  
26 to information transferred from a law enforcement or regulatory  
27 agency, or information transferred to another law enforcement or  
28 regulatory agency, a use is compatible if the use of the information  
29 requested is needed in an investigation of unlawful activity under  
30 the jurisdiction of the requesting agency or for licensing,  
31 certification, or regulatory purposes by that agency.

32 (f) To a governmental entity when required by state or federal  
33 law.

34 (g) Pursuant to the California Public Records Act (Chapter 3.5  
35 (commencing with Section 6250) of Division 7 of Title 1 of the  
36 Government Code).

37 (h) To a person who has provided the agency with advance,  
38 adequate written assurance that the information will be used solely  
39 for statistical research or reporting purposes, but only if the

1 information to be disclosed is in a form that will not identify any  
2 individual.

3 (i) Pursuant to a determination by the agency that maintains  
4 information that compelling circumstances exist that affect the  
5 health or safety of an individual, if upon the disclosure notification  
6 is transmitted to the individual to whom the information pertains  
7 at his or her last known address. Disclosure shall not be made if  
8 it is in conflict with other state or federal laws.

9 (j) To the State Archives as a record that has sufficient historical  
10 or other value to warrant its continued preservation by the  
11 California state government, or for evaluation by the Director of  
12 General Services or his or her designee to determine whether the  
13 record has further administrative, legal, or fiscal value.

14 (k) To any person pursuant to a subpoena, court order, or other  
15 compulsory legal process if, before the disclosure, the agency  
16 reasonably attempts to notify the individual to whom the record  
17 pertains, and if the notification is not prohibited by law.

18 (l) To any person pursuant to a search warrant.

19 (m) Pursuant to Article 3 (commencing with Section 1800) of  
20 Chapter 1 of Division 2 of the Vehicle Code.

21 (n) For the sole purpose of verifying and paying government  
22 health care service claims made pursuant to Division 9  
23 (commencing with Section 10000) of the Welfare and Institutions  
24 Code.

25 (o) To a law enforcement or regulatory agency when required  
26 for an investigation of unlawful activity or for licensing,  
27 certification, or regulatory purposes, unless the disclosure is  
28 otherwise prohibited by law.

29 (p) To another person or governmental organization to the extent  
30 necessary to obtain information from the person or governmental  
31 organization as necessary for an investigation by the agency of a  
32 failure to comply with a specific state law that the agency is  
33 responsible for enforcing.

34 (q) To an adopted person and is limited to general background  
35 information pertaining to the adopted person's natural parents,  
36 provided that the information does not include or reveal the identity  
37 of the natural parents.

38 (r) To a child or a grandchild of an adopted person and  
39 disclosure is limited to medically necessary information pertaining  
40 to the adopted person's natural parents. However, the information,

1 or the process for obtaining the information, shall not include or  
2 reveal the identity of the natural parents. The State Department of  
3 Social Services shall adopt regulations governing the release of  
4 information pursuant to this subdivision by July 1, 1985. The  
5 regulations shall require licensed adoption agencies to provide the  
6 same services provided by the department as established by this  
7 subdivision.

8 (s) To a committee of the Legislature or to a Member of the  
9 Legislature, or his or her staff when authorized in writing by the  
10 member, where the member has permission to obtain the  
11 information from the individual to whom it pertains or where the  
12 member provides reasonable assurance that he or she is acting on  
13 behalf of the individual.

14 (t) (1) To the University of California, a nonprofit educational  
15 institution, or, in the case of education-related data, another  
16 nonprofit entity, conducting scientific research, provided the  
17 request for information is approved by the Committee for the  
18 Protection of Human Subjects (CPHS) for the California Health  
19 and Human Services Agency (CHHSA) or an institutional review  
20 board, as authorized in paragraphs (4) and (5). The approval  
21 required under this subdivision shall include a review and  
22 determination that all the following criteria have been satisfied:

23 (A) The researcher has provided a plan sufficient to protect  
24 personal information from improper use and disclosures, including  
25 sufficient administrative, physical, and technical safeguards to  
26 protect personal information from reasonable anticipated threats  
27 to the security or confidentiality of the information.

28 (B) The researcher has provided a sufficient plan to destroy or  
29 return all personal information as soon as it is no longer needed  
30 for the research project, unless the researcher has demonstrated  
31 an ongoing need for the personal information for the research  
32 project and has provided a long-term plan sufficient to protect the  
33 confidentiality of that information.

34 (C) The researcher has provided sufficient written assurances  
35 that the personal information will not be reused or disclosed to  
36 any other person or entity, or used in any manner, not approved  
37 in the research protocol, except as required by law or for authorized  
38 oversight of the research project.

39 (2) The CPHS or institutional review board shall, at a minimum,  
40 accomplish all of the following as part of its review and approval

1 of the research project for the purpose of protecting personal  
2 information held in agency databases:

3 (A) Determine whether the requested personal information is  
4 needed to conduct the research.

5 (B) Permit access to personal information only if it is needed  
6 for the research project.

7 (C) Permit access only to the minimum necessary personal  
8 information needed for the research project.

9 (D) Require the assignment of unique subject codes that are not  
10 derived from personal information in lieu of social security  
11 numbers if the research can still be conducted without social  
12 security numbers.

13 (E) If feasible, and if cost, time, and technical expertise permit,  
14 require the agency to conduct a portion of the data processing for  
15 the researcher to minimize the release of personal information.

16 (3) Reasonable costs to the agency associated with the agency's  
17 process of protecting personal information under the conditions  
18 of CPHS approval may be billed to the researcher, including, but  
19 not limited to, the agency's costs for conducting a portion of the  
20 data processing for the researcher, removing personal information,  
21 encrypting or otherwise securing personal information, or assigning  
22 subject codes.

23 (4) The CPHS may enter into written agreements to enable other  
24 institutional review boards to provide the data security approvals  
25 required by this subdivision, provided the data security  
26 requirements set forth in this subdivision are satisfied.

27 (5) Pursuant to paragraph (4), the CPHS shall enter into a written  
28 agreement with the institutional review board established pursuant  
29 to Section 49079.5 of the Education Code. The agreement shall  
30 authorize, commencing July 1, 2010, or the date upon which the  
31 written agreement is executed, whichever is later, that board to  
32 provide the data security approvals required by this subdivision,  
33 provided the data security requirements set forth in this subdivision  
34 and the act specified in paragraph (1) of subdivision (a) of Section  
35 49079.5 are satisfied.

36 (u) To an insurer if authorized by Chapter 5 (commencing with  
37 Section 10900) of Division 4 of the Vehicle Code.

38 (v) Pursuant to Section ~~280, 282, 450, 452, 8009, or 18396~~ of  
39 the Financial Code.

1 This article shall not be construed to require the disclosure of  
2 personal information to the individual to whom the information  
3 pertains when that information may otherwise be withheld as set  
4 forth in Section 1798.40.

5 SEC. 3. Section 202 of the Corporations Code is amended to  
6 read:

7 202. The articles of incorporation shall set forth:

8 (a) The name of the corporation; provided, however, that in  
9 order for the corporation to be subject to the provisions of this  
10 division applicable to a close corporation (Section 158), the name  
11 of the corporation must contain the word “corporation,”  
12 “incorporated,” or “limited” or an abbreviation of one of such  
13 words.

14 (b) (1) The applicable one of the following statements:

15 (A) The purpose of the corporation is to engage in any lawful  
16 act or activity for which a corporation may be organized under the  
17 General Corporation Law of California other than the banking  
18 business, the trust company business or the practice of a profession  
19 permitted to be incorporated by the California Corporations Code;  
20 or

21 (B) The purpose of the corporation is to engage in the profession  
22 of \_\_\_\_ (with the insertion of a profession permitted to be  
23 incorporated by the California Corporations Code) and any other  
24 lawful activities (other than the banking or trust company business)  
25 not prohibited to a corporation engaging in such profession by  
26 applicable laws and regulations.

27 (2) In case the corporation is a corporation subject to the  
28 Banking Law (Division ~~4~~ 1.1 (commencing with Section ~~99~~ 1000)  
29 of the Financial Code), the articles shall set forth a statement of  
30 purpose which is prescribed in the applicable provision of the  
31 Banking Law.

32 (3) In case the corporation is a corporation subject to the  
33 Insurance Code as an insurer, the articles shall additionally state  
34 that the business of the corporation is to be an insurer.

35 (4) If the corporation is intended to be a “professional  
36 corporation” within the meaning of the Moscone-Knox Professional  
37 Corporation Act (Part 4 (commencing with Section 13400) of  
38 Division 3), the articles shall additionally contain the statement  
39 required by Section 13404.

1 The articles shall not set forth any further or additional statement  
2 with respect to the purposes or powers of the corporation, except  
3 by way of limitation or except as expressly required by any law  
4 of this state other than this division or any federal or other statute  
5 or regulation (including the Internal Revenue Code and regulations  
6 thereunder as a condition of acquiring or maintaining a particular  
7 status for tax purposes).

8 (c) The name and street address in this state of the corporation's  
9 initial agent for service of process in accordance with subdivision  
10 (b) of Section 1502.

11 (d) The initial street address of the corporation.

12 (e) The initial mailing address of the corporation, if different  
13 from the initial street address.

14 (f) If the corporation is authorized to issue only one class of  
15 shares, the total number of shares which the corporation is  
16 authorized to issue.

17 (g) If the corporation is authorized to issue more than one class  
18 of shares, or if any class of shares is to have two or more series:

19 (1) The total number of shares of each class the corporation is  
20 authorized to issue, and the total number of shares of each series  
21 which the corporation is authorized to issue or that the board is  
22 authorized to fix the number of shares of any such series;

23 (2) The designation of each class, and the designation of each  
24 series or that the board may determine the designation of any such  
25 series; and

26 (3) The rights, preferences, privileges, and restrictions granted  
27 to or imposed upon the respective classes or series of shares or the  
28 holders thereof, or that the board, within any limits and restrictions  
29 stated, may determine or alter the rights, preferences, privileges,  
30 and restrictions granted to or imposed upon any wholly unissued  
31 class of shares or any wholly unissued series of any class of shares.  
32 As to any series the number of shares of which is authorized to be  
33 fixed by the board, the articles may also authorize the board, within  
34 the limits and restrictions stated therein or stated in any resolution  
35 or resolutions of the board originally fixing the number of shares  
36 constituting any series, to increase or decrease (but not below the  
37 number of shares of such series then outstanding) the number of  
38 shares of any such series subsequent to the issue of shares of that  
39 series. In case the number of shares of any series shall be so  
40 decreased, the shares constituting such decrease shall resume the

1 status which they had prior to the adoption of the resolution  
2 originally fixing the number of shares of such series.

3 SEC. 4. Section 1800 of the Corporations Code is amended to  
4 read:

5 1800. (a) A verified complaint for involuntary dissolution of  
6 a corporation on any one or more of the grounds specified in  
7 subdivision (b) may be filed in the superior court of the proper  
8 county by any of the following persons:

9 (1) One-half or more of the directors in office.

10 (2) A shareholder or shareholders who hold shares representing  
11 not less than  $33\frac{1}{3}$  percent of (i) the total number of outstanding  
12 shares (assuming conversion of any preferred shares convertible  
13 into common shares) or (ii) the outstanding common shares or (iii)  
14 the equity of the corporation, exclusive in each case of shares  
15 owned by persons who have personally participated in any of the  
16 transactions enumerated in paragraph (4) of subdivision (b), or  
17 any shareholder or shareholders of a close corporation.

18 (3) Any shareholder if the ground for dissolution is that the  
19 period for which the corporation was formed has terminated  
20 without extension thereof.

21 (4) Any other person expressly authorized to do so in the articles.

22 (b) The grounds for involuntary dissolution are that:

23 (1) The corporation has abandoned its business for more than  
24 one year.

25 (2) The corporation has an even number of directors who are  
26 equally divided and cannot agree as to the management of its  
27 affairs, so that its business can no longer be conducted to advantage  
28 or so that there is danger that its property and business will be  
29 impaired or lost, and the holders of the voting shares of the  
30 corporation are so divided into factions that they cannot elect a  
31 board consisting of an uneven number.

32 (3) There is internal dissension and two or more factions of  
33 shareholders in the corporation are so deadlocked that its business  
34 can no longer be conducted with advantage to its shareholders or  
35 the shareholders have failed at two consecutive annual meetings  
36 at which all voting power was exercised, to elect successors to  
37 directors whose terms have expired or would have expired upon  
38 election of their successors.

39 (4) Those in control of the corporation have been guilty of or  
40 have knowingly countenanced persistent and pervasive fraud,

1 mismanagement or abuse of authority or persistent unfairness  
2 toward any shareholders or its property is being misapplied or  
3 wasted by its directors or officers.

4 (5) In the case of any corporation with 35 or fewer shareholders  
5 (determined as provided in Section 605), liquidation is reasonably  
6 necessary for the protection of the rights or interests of the  
7 complaining shareholder or shareholders.

8 (6) The period for which the corporation was formed has  
9 terminated without extension of such period.

10 (c) At any time prior to the trial of the action any shareholder  
11 or creditor may intervene therein.

12 (d) This section does not apply to any corporation subject to the  
13 Banking Law (Division ~~1.1~~ (commencing with Section ~~99~~ 1000)  
14 of the Financial Code), the Public Utilities Act (Part 1  
15 (commencing with 201) of Division 1 of the Public Utilities Code),  
16 the Savings and Loan Association Law (Division 2 (commencing  
17 with Section 5000) of the Financial Code) or Article 14  
18 (commencing with Section 1010) of Chapter 1 of Part 2 of Division  
19 1 of the Insurance Code.

20 (e) For the purposes of this section, “shareholder” includes a  
21 beneficial owner of shares who has entered into an agreement  
22 under Section 300 or 706.

23 SEC. 5. Section 2602 of the Corporations Code is amended to  
24 read:

25 2602. The articles of incorporation shall set forth:

26 (a) The name of the flexible purpose corporation that shall  
27 contain the words “flexible purpose corporation” or an abbreviation  
28 of those words.

29 (b) (1) Either of the following statements, as applicable:

30 (A) “The purpose of this flexible purpose corporation is to  
31 engage in any lawful act or activity for which a flexible purpose  
32 corporation may be organized under Division 1.5 of the California  
33 Corporations Code, other than the banking business, the trust  
34 company business or the practice of a profession permitted to be  
35 incorporated by the California Corporations Code, for the benefit  
36 of the long-term and the short-term interests of the flexible purpose  
37 corporation and its shareholders and in furtherance of the following  
38 enumerated purposes \_\_\_\_.”

39 (B) “The purpose of this flexible purpose corporation is to  
40 engage in the profession of \_\_\_\_ (with the insertion of a profession

1 permitted to be incorporated by the California Corporations Code)  
2 and any other lawful activities, other than the banking or trust  
3 company business, not prohibited to a flexible purpose corporation  
4 engaging in that profession by applicable laws and regulations,  
5 for the benefit of the long-term and the short-term interests of the  
6 flexible purpose corporation and its shareholders.”

7 (2) A statement that a purpose of the flexible purpose  
8 corporation is to engage in one or more of the following purposes,  
9 in addition to the purpose stated pursuant to paragraph (1):

10 (A) One or more charitable or public purpose activities that a  
11 nonprofit public benefit corporation is authorized to carry out.

12 (B) The purpose of promoting positive short-term or long-term  
13 effects of, or minimizing adverse short-term or long-term effects  
14 of, the flexible purpose corporation’s activities upon any of the  
15 following:

16 (i) The flexible purpose corporation’s employees, suppliers,  
17 customers, and creditors.

18 (ii) The community and society.

19 (iii) The environment.

20 (3) A statement that the flexible purpose corporation is organized  
21 as a flexible purpose corporation under the Corporate Flexibility  
22 Act of 2011.

23 (4) If the flexible purpose corporation is a flexible purpose  
24 corporation subject to the Banking Law (Division—~~4~~ 1.1  
25 (commencing with Section—~~99~~ 1000) of the Financial Code), the  
26 articles shall set forth a statement of purpose that is prescribed by  
27 the applicable provision of the Banking Law (Division—~~4~~ 1.1  
28 (commencing with Section—~~99~~ 1000) of the Financial Code).

29 (5) If the flexible purpose corporation is a flexible purpose  
30 corporation subject to the Insurance Code as an insurer, the articles  
31 shall additionally state that the business of the flexible purpose  
32 corporation is to be an insurer.

33 (6) If the flexible purpose corporation is intended to be a  
34 professional corporation within the meaning of the Moscone-Knox  
35 Professional Corporation Act (Part 4 (commencing with Section  
36 13400) of Division 3), the articles shall additionally contain the  
37 statement required by Section 13404. The articles shall not set  
38 forth any further or additional statement with respect to the  
39 purposes or powers of the flexible purpose corporation, except by  
40 way of limitation or except as expressly required by any law of

1 this state, other than this division, or any federal or other statute  
2 or regulation, including the Internal Revenue Code and regulations  
3 thereunder as a condition of acquiring or maintaining a particular  
4 status for tax purposes.

5 (7) If the flexible purpose corporation is a close flexible purpose  
6 corporation, a statement as required by subdivision (a) of Section  
7 158.

8 (c) The name and street address in this state of the flexible  
9 purpose corporation's initial agent for service of process in  
10 accordance with subdivision (b) of Section 1502.

11 (d) The initial street address of the corporation.

12 (e) The initial mailing address of the corporation, if different  
13 from the initial street address.

14 (f) If the flexible purpose corporation is authorized to issue only  
15 one class of shares, the total number of shares that the flexible  
16 purpose corporation is authorized to issue.

17 (g) If the flexible purpose corporation is authorized to issue  
18 more than one class of shares, or if any class of shares is to have  
19 two or more series, the articles shall state:

20 (1) The total number of shares of each class that the flexible  
21 purpose corporation is authorized to issue and the total number of  
22 shares of each series that the flexible purpose corporation is  
23 authorized to issue or that the board is authorized to fix the number  
24 of shares of any such series.

25 (2) The designation of each class and the designation of each  
26 series or that the board may determine the designation of any such  
27 series.

28 (3) The rights, preferences, privileges, and restrictions granted  
29 to or imposed upon the respective classes or series of shares or the  
30 holders thereof, or that the board, within any limits and restrictions  
31 stated, may determine or alter the rights, preferences, privileges,  
32 and restrictions granted to or imposed upon any wholly unissued  
33 class of shares or any wholly unissued series of any class of shares.  
34 As to any series the number of shares of which is authorized to be  
35 fixed by the board, the articles may also authorize the board, within  
36 the limits and restrictions stated in the article or in any resolution  
37 or resolutions of the board originally fixing the number of shares  
38 constituting any series, to increase or decrease, but not below the  
39 number of shares of such series then outstanding, the number of  
40 shares of any series subsequent to the issue of shares of that series.

1 If the number of shares of any series shall be so decreased, the  
2 shares constituting that decrease shall resume the status which they  
3 had prior to the adoption of the resolution originally fixing the  
4 number of shares of that series.

5 SEC. 6. Section 16901 of the Corporations Code is amended  
6 to read:

7 16901. In this article, the following terms have the following  
8 meanings:

9 (1) "Constituent other business entity" means any other business  
10 entity that is merged with or into one or more partnerships and  
11 includes a surviving other business entity.

12 (2) "Constituent partnership" means a partnership that is merged  
13 with or into one or more other partnerships or other business  
14 entities and includes a surviving partnership.

15 (3) "Disappearing other business entity" means a constituent  
16 other business entity that is not the surviving other business entity.

17 (4) "Disappearing partnership" means a constituent partnership  
18 that is not the surviving partnership.

19 (5) "Domestic" means organized under the laws of this state  
20 when used in relation to any partnership, other business entity, or  
21 person (other than an individual).

22 (6) "Foreign other business entity" means any other business  
23 entity formed under the laws of any state other than this state or  
24 under the laws of the United States or of a foreign country.

25 (7) "Foreign partnership" means a partnership formed under  
26 the laws of any state other than this state or under the laws of a  
27 foreign country.

28 (8) "General partner" means a partner in a partnership and a  
29 general partner in a limited partnership.

30 (9) "Limited liability company" means a limited liability  
31 company created under ~~Title 2.5 (commencing with Section~~  
32 ~~17000)~~, *Title 2.6 (commencing with Section 17701.01)*, or  
33 comparable law of another jurisdiction.

34 (10) "Limited partner" means a limited partner in a limited  
35 partnership.

36 (11) "Limited partnership" means a limited partnership created  
37 under Chapter 3 (commencing with Section 15611) or Chapter 5.5  
38 (commencing with Section 15900), predecessor law, or comparable  
39 law of another jurisdiction.

(12) “Other business entity” means a limited partnership, limited liability company, corporation, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a partnership.

(13) “Partner” includes both a general partner and a limited partner.

(14) “Surviving other business entity” means an other business entity into which one or more partnerships are merged.

(15) “Surviving partnership” means a partnership into which one or more other partnerships or other business entities are merged.

SEC. 7. Section 31118 of the Corporations Code is amended to read:

31118. The commissioner may vacate or modify a stop order if he *or she* finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

SEC. 8. Section 300 of the Financial Code is amended to read:

300. (a) In this section:

(1) “Business and industrial development corporation” means a corporation licensed under Division 15 (commencing with Section 31000).

(2) “Payment instrument” has the same meaning as set forth in Section ~~33059~~ 2003.

(3) ~~“Traveler’s check”~~ “Stored Value” has the same meaning as set forth in *subdivision (v) of Section 1803* 2003.

(b) There is in the state government, in the Business, Consumer Services, and Housing Agency, a Department of Business Oversight, which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) persons who engage in the business of receiving money for transmission ~~to foreign nations~~ or such business; (5) issuers of ~~traveler’s checks~~ *stored value* or ~~the traveler’s check~~ *such* business; (6) issuers of payment instruments or the payment instrument business; (7) business and industrial development corporations or the business and industrial development corporation business; (8) insurance premium finance agencies or the insurance premium finance business; (9) persons offering or making any contract constituting bucketing; (10)

1 persons offering or selling off-exchange commodities; (11) deferred  
2 deposit originators; (12) finance lenders and brokers; (13)  
3 residential mortgage lenders and servicers; (14) capital access  
4 companies; (15) check sellers, bill payers, and proraters; (16)  
5 securities issuers, broker-dealers, agents, investment advisers, and  
6 investment adviser representatives; (17) mortgage loan originators  
7 employed or supervised by finance lenders or residential mortgage  
8 lenders; (18) escrow agents; (19) franchisors; or (20) persons  
9 holding securities as custodians on behalf of securities owners.

10 SEC. 9. Section 459 of the Financial Code is amended to read:

11 459. (a) Every licensee shall file with the commissioner one  
12 copy of all material filed by the licensee with ~~any applicable a~~  
13 ~~federal financial institutions regulatory agency that is charged~~  
14 ~~with the supervision and regulation of that licensee, or a law~~  
15 ~~enforcement agency, or other federal agency that is required to be~~  
16 ~~filed by law or order of the agency.~~

17 (b) Each copy required to be filed pursuant to subdivision (a)  
18 shall be filed with the commissioner on or before the date upon  
19 which the original is filed with the ~~federal regulatory agency~~  
20 *agencies specified in subdivision (a)* and shall be available for  
21 inspection by the public except to the extent the information  
22 contained therein is accorded confidential treatment under *state*  
23 *or federal law or regulations. That material shall be open for*  
24 ~~inspection by the Attorney General.~~

25 SEC. 10. Section 1001 is added to the Financial Code, to read:

26 1001. This division is known, and may be cited, as the  
27 “Banking Law.”

28 SEC. 11. Section 4000 of the Financial Code is amended to  
29 read:

30 4000. (a) For purposes of this division, the following terms  
31 have the following meanings:

32 (1) “Charge cardholder” and “charge card issuer” have the  
33 meaning defined in Section 1748.21 of the Civil Code and “charge  
34 card” means those cards defined in subdivision (a) of Section  
35 1748.21 of the Civil Code and upon which the full balance is due  
36 and payable in each billing cycle.

37 (2) “Consumer” means a natural person.

38 (3) “Consumer credit agreement” means any written instrument  
39 providing for an extension of unsecured open-end credit for  
40 personal, family, or household purposes, that governs the

1 relationship between a supervised financial organization and one  
2 or more consumers.

3 (4) “Charge card agreement” means the written instrument that  
4 creates and governs the relationship between a charge card issuer  
5 and one or more consumers.

6 (5) “Minimum payment” means that amount of money recited  
7 on a billing statement for an open-end credit account that must be  
8 received by the supervised financial institution by a specified due  
9 date.

10 (6) “Open-end credit” has the meaning set forth in Section  
11 ~~226.2(a)(20)~~ 1026.2(a)(20) of Regulation Z.

12 (7) “Regulation Z” means any rule, regulation, or interpretation  
13 promulgated by the ~~Board of Governors of the Federal Reserve~~  
14 ~~System Consumer Financial Protection Bureau~~ under the federal  
15 Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.),  
16 and any interpretation or approval issued by an official or employee  
17 of the Federal Reserve System duly authorized by the ~~board~~  
18 *director of the bureau* under the Truth in Lending Act, as amended,  
19 to issue interpretations or approvals.

20 (8) “Security interest” has the meaning set forth in Section  
21 ~~226.2(a)(25)~~ 1026.2(a)(25) of Regulation Z.

22 (9) “Supervised financial organization” means a state or  
23 federally regulated bank, savings association, savings bank, or  
24 credit union, or a subsidiary of any of the above.

25 (10) “Unsecured” means that the supervised financial  
26 organization is not granted a security interest in personal or real  
27 property under the consumer credit agreement.

28 (b) Notwithstanding any other provisions of law, the definitions  
29 contained in this section shall control transactions governed by  
30 this division.

31 SEC. 12. Section 4970 of the Financial Code is amended to  
32 read:

33 4970. For purposes of this division:

34 (a) “Annual percentage rate” means the annual percentage rate  
35 for the loan calculated according to the provisions of the federal  
36 Truth in Lending Act and the regulations adopted thereunder by  
37 the ~~Federal Reserve Board~~ *Consumer Financial Protection Bureau*.

38 (b) “Covered loan” means a consumer loan in which the original  
39 principal balance of the loan does not exceed the most current  
40 conforming loan limit for a single-family first mortgage loan

1 established by the Federal National Mortgage Association in the  
2 case of a mortgage or deed of trust, and where one of the following  
3 conditions are met:

4 (1) For a mortgage or deed of trust, the annual percentage rate  
5 at consummation of the transaction will exceed by more than eight  
6 percentage points the yield on Treasury securities having  
7 comparable periods of maturity on the 15th day of the month  
8 immediately preceding the month in which the application for the  
9 extension of credit is received by the creditor.

10 (2) The total points and fees payable by the consumer at or  
11 before closing for a mortgage or deed of trust will exceed 6 percent  
12 of the total loan amount.

13 (c) "Points and fees" shall include the following:

14 (1) All items required to be disclosed as finance charges under  
15 Sections ~~226.4(a)~~ 1026.4(a) and ~~226.4(b)~~ 1026.4(b) of Title 12 of  
16 the Code of Federal Regulations, including the Official Staff  
17 Commentary, as amended from time to time, except interest.

18 (2) All compensation and fees paid to mortgage brokers in  
19 connection with the loan transaction.

20 (3) All items listed in Section ~~226.4(c)(7)~~ 1026.4(c)(7) of Title  
21 12 of the Code of Federal Regulations, only if the person  
22 originating the covered loan receives direct compensation in  
23 connection with the charge.

24 (d) "Consumer loan" means a consumer credit transaction that  
25 is secured by real property located in this state used, or intended  
26 to be used or occupied, as the principal dwelling of the consumer  
27 that is improved by a one-to-four residential unit. "Consumer loan"  
28 does not include a reverse mortgage, an open line of credit as  
29 defined in Part ~~226~~ 1026 of Title 12 of the Code of Federal  
30 Regulations (Regulation Z), or a consumer credit transaction that  
31 is secured by rental property or second homes. "Consumer loan"  
32 does not include a bridge loan. For purposes of this division, a  
33 bridge loan is any temporary loan, having a maturity of one year  
34 or less, for the purpose of acquisition or construction of a dwelling  
35 intended to become the consumer's principal dwelling.

36 (e) "Original principal balance" means the total initial amount  
37 the consumer is obligated to repay on the loan.

38 (f) "Licensing agency" shall mean the Bureau of Real Estate  
39 for licensed real estate brokers, the Department of Business  
40 Oversight for licensed residential mortgage lenders, licensed

1 finance lenders and brokers, and the commercial and industrial  
2 banks and savings associations and credit unions organized in this  
3 state.

4 (g) “Licensed person” means a real estate broker licensed under  
5 the Real Estate Law (Part 1 (commencing with Section 10000) of  
6 Division 4 of the Business and Professions Code), a finance lender  
7 or broker licensed under the California Finance Lenders Law  
8 (Division 9 (commencing with Section 22000)), a residential  
9 mortgage lender licensed under the California Residential Mortgage  
10 Lending Act (Division 20 (commencing with Section 50000)), a  
11 commercial or industrial bank organized under the Banking Law  
12 (Division ~~4~~ 1.1 (commencing with Section ~~99~~ 1000)), a savings  
13 association organized under the Savings Association Law (Division  
14 2 (commencing with Section 5000)), and a credit union organized  
15 under the California Credit Union Law (Division 5 (commencing  
16 with Section 14000)). This division shall not be construed to  
17 prevent any enforcement by a governmental entity against any  
18 person who originates a loan and who is exempt or excluded from  
19 licensure by all of the licensing agencies, based on a violation of  
20 any provision of this division. This division shall not be construed  
21 to prevent the Bureau of Real Estate from enforcing this division  
22 against a licensed salesperson employed by a licensed real estate  
23 broker as if that salesperson were a licensed person under this  
24 division. A licensed person includes any person engaged in the  
25 practice of consumer lending, as defined in this division, for which  
26 a license is required under any other provision of law, but whose  
27 license is invalid, suspended or revoked, or where no license has  
28 been obtained.

29 (h) “Originate” means to arrange, negotiate, or make a consumer  
30 loan.

31 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)  
32 of the Real Estate Settlement Procedures Act of 1974.

33 SEC. 13. Section 4973 of the Financial Code is amended to  
34 read:

35 4973. The following are prohibited acts and limitations for  
36 covered loans:

37 (a) (1) A covered loan shall not include a prepayment fee or  
38 penalty after the first 36 months after the date of consummation  
39 of the loan.

1 (2) A covered loan may include a prepayment fee or penalty up  
2 to the first 36 months after the date of consummation of the loan  
3 if:

4 (A) The person who originates the covered loan has also offered  
5 the consumer a choice of another product without a prepayment  
6 fee or penalty.

7 (B) The person who originates the covered loan has disclosed  
8 in writing to the consumer at least three business days prior to loan  
9 consummation the terms of the prepayment fee or penalty to the  
10 consumer for accepting a covered loan with the prepayment penalty  
11 and the rates, points, and fees that would be available to the  
12 consumer for accepting a covered loan without a prepayment  
13 penalty.

14 (C) The person who originates the covered loan has limited the  
15 amount of the prepayment fee or penalty to an amount not to  
16 exceed the payment of six months' advance interest, at the contract  
17 rate of interest then in effect, on the amount prepaid in any  
18 12-month period in excess of 20 percent of the original principal  
19 amount.

20 (D) A covered loan will not impose the prepayment fee or  
21 penalty if the covered loan is accelerated as a result of default.

22 (E) The person who originates the covered loan will not finance  
23 a prepayment penalty through a new loan that is originated by the  
24 same person.

25 (b) (1) A covered loan with a term of 5 years or less may not  
26 provide at origination for a payment schedule with regular periodic  
27 payments that when aggregated do not fully amortize the principal  
28 balance as of the maturity date of the loan.

29 (2) For a payment schedule that is adjusted to account for the  
30 seasonal or irregular income of the consumer, the total installments  
31 in any year shall not exceed the amount of one year's worth of  
32 payments on the loan. This prohibition does not apply to a bridge  
33 loan. For purposes of this paragraph, "bridge loan" means a loan  
34 with a maturity of less than 18 months that only requires payments  
35 of interest until the time when the entire unpaid balance is due and  
36 payable.

37 (c) A covered loan shall not contain a provision for negative  
38 amortization such that the payment schedule for regular monthly  
39 payments causes the principal balance to increase, unless the  
40 covered loan is a first mortgage and the person who originates the

1 loan discloses to the consumer that the loan contains a negative  
2 amortization provision that may add principal to the balance of  
3 the loan.

4 (d) A covered loan shall not include terms under which periodic  
5 payments required under the loan are consolidated and paid in  
6 advance from the loan proceeds.

7 (e) A covered loan shall not contain a provision that increases  
8 the interest rate as a result of a default. This provision does not  
9 apply to interest rate changes in a variable rate loan otherwise  
10 consistent with the provisions of the loan documents, provided the  
11 change in the interest rate is not triggered by the event of default  
12 or the acceleration for the indebtedness.

13 (f) (1) A person who originates covered loans shall not make  
14 or arrange a covered loan unless at the time the loan is  
15 consummated, the person reasonably believes the consumer, or  
16 consumers, when considered collectively in the case of multiple  
17 consumers, will be able to make the scheduled payments to repay  
18 the obligation based upon a consideration of their current and  
19 expected income, current obligations, employment status, and  
20 other financial resources, other than the consumer's equity in the  
21 dwelling that secures repayment of the loan. In the case of a  
22 covered loan that is structured to increase to a specific designated  
23 rate, stated as a number or formula, at a specific predetermined  
24 date not exceeding 37 months from the date of application, this  
25 evaluation shall be based upon the fully indexed rate of the loan  
26 calculated at the time of application.

27 The consumer shall be presumed to be able to make the  
28 scheduled payments to repay the obligation if, at the time the loan  
29 is consummated, the consumer's total monthly debts, including  
30 amounts owed under the loan, do not exceed 55 percent of the  
31 consumer's monthly gross income, as verified by the credit  
32 application, the consumer's financial statement, a credit report,  
33 financial information provided to the person originating the loan  
34 by or on behalf of the consumer, or any other reasonable means.

35 (2) No presumption of inability to make the scheduled payments  
36 to repay the obligation shall arise solely from the fact that at the  
37 time the loan is consummated, the consumer's total monthly debts,  
38 including amounts owed under the loan, exceed 55 percent of the  
39 consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief requirement in paragraph (1) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer, the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(i) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale provision, or (3) due to fraud or material misrepresentation by a consumer in connection with the loan or the value of the security for the loan.

(j) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of

1 refinancing, debt consolidation or cash out, that does not result in  
2 an identifiable benefit to the consumer, considering the consumer's  
3 stated purpose for seeking the loan, fees, interest rates, finance  
4 charges, and points.

5 (k) (1) A covered loan shall not be made unless the following  
6 disclosure, written in 12-point font or larger, has been provided to  
7 the consumer no later than three business days prior to signing of  
8 the loan documents of the transaction:

9  
10 CONSUMER CAUTION AND HOME OWNERSHIP  
11 COUNSELING NOTICE  
12

13 If you obtain this loan, the lender will have a mortgage on your  
14 home. You could lose your home, and any money you have put  
15 into it, if you do not meet your obligations under the loan.

16 Mortgage loan rates and closing costs and fees vary based on  
17 many other factors, including your particular credit and financial  
18 circumstances, your earnings history, the loan-to-value requested,  
19 and the type of property that will secure your loan. Higher rates  
20 and fees may be justified depending on the individual  
21 circumstances of a particular consumer's application. You should  
22 shop around and compare loan rates and fees.

23 This particular loan may have a higher rate and total points and  
24 fees than other mortgage loans and is, or may be, subject to the  
25 additional disclosure and substantive protections under Division  
26 ~~1-6~~ 1.7 (commencing with Section ~~4970~~ 4970) of the Financial  
27 Code. You should consider consulting a qualified independent  
28 credit counselor or other experienced financial adviser regarding  
29 the rate, fees, and provisions of this mortgage loan before you  
30 proceed. For information on contacting a qualified credit counselor,  
31 ask your lender or call the United States Department of Housing  
32 and Urban Development's counseling hotline at ~~1-888-466-3487~~  
33 ~~1-888-995-HOPE (4673)~~ or go to ~~www.hud.gov/pha/sfh/hee~~  
34 ~~www.hud.gov/offices/hsg/hcc/fc/~~ for a list of ~~counselors~~.  
35 *HUD-approved housing counseling agencies.*

36 You are not required to complete any loan agreement merely  
37 because you have received these disclosures or have signed a loan  
38 application.

39 If you proceed with this mortgage loan, you should also  
40 remember that you may face serious financial risks if you use this

1 loan to pay off credit card debts and other debts in connection with  
2 this transaction and then subsequently incur significant new credit  
3 card charges or other debts. If you continue to accumulate debt  
4 after this loan is closed and then experience financial difficulties,  
5 you could lose your home and any equity you have in it if you do  
6 not meet your mortgage loan obligations.

7 Property taxes and homeowner's insurance are your  
8 responsibility. Not all lenders provide escrow services for these  
9 payments. You should ask your lender about these services.

10 Your payments on existing debts contribute to your credit ratings.  
11 You should not accept any advice to ignore your regular payments  
12 to your existing creditors.

13 (2) It shall be a rebuttable presumption that a licensed person  
14 has met its obligation to provide this disclosure if the consumer  
15 provides the licensed person with a signed acknowledgment of  
16 receipt of a copy of the notice set forth in paragraph (1).

17 (l) (1) A person who originates a covered loan shall not steer,  
18 counsel, or direct any prospective consumer to accept a loan  
19 product with a risk grade less favorable than the risk grade that  
20 the consumer would qualify for based on that person's then current  
21 underwriting guidelines, prudently applied, considering the  
22 information available to that person, including the information  
23 provided by the consumer.

24 A person shall not be deemed to have violated this section if the  
25 risk grade determination applied to a consumer is reasonably based  
26 on the person's underwriting guidelines if it is an appropriate risk  
27 grade category for which the consumer qualifies with the person.

28 (2) If a broker originates a covered loan, the broker shall not  
29 steer, counsel, or direct any prospective consumer to accept a loan  
30 product at a higher cost than that for which the consumer could  
31 qualify based on the loan products offered by the persons with  
32 whom the broker regularly does business.

33 (m) A person who originates a covered loan shall not avoid, or  
34 attempt to avoid, the application of this division by doing the  
35 following:

36 (1) Structuring a loan transaction as an open-end credit plan for  
37 the purpose of evading the provisions of this division when the  
38 loan would have been a covered loan if the loan had been structured  
39 as a closed end loan.

1 (2) Dividing any loan transaction into separate parts for the  
2 purpose of evading the provisions of this division.

3 (n) A person who originates a covered loan shall not act in any  
4 manner, whether specifically prohibited by this section or of a  
5 different character, that constitutes fraud.

6 SEC. 14. Section 4995 of the Financial Code is amended to  
7 read:

8 4995. The following definitions shall apply for purposes of  
9 this division:

10 (a) “Higher-priced mortgage loan” has the meaning set forth in  
11 ~~Part 226~~ *Section 1026.35* of Title 12 of the Code of Federal  
12 Regulations.

13 (b) “Licensed person” means a real estate broker licensed under  
14 the Real Estate Law (Part 1 (commencing with Section 10000) of  
15 Division 4 of the Business and Professions Code), a finance lender  
16 or broker licensed under the California Finance Lenders Law  
17 (Division 9 (commencing with Section 22000)), a residential  
18 mortgage lender licensed under the California Residential Mortgage  
19 Lending Act (Division 20 (commencing with Section 50000)), a  
20 commercial or industrial bank organized under the Banking Law  
21 (Division 1.1 (commencing with Section 1000)), a savings  
22 association organized under the Savings Association Law (Division  
23 2 (commencing with Section 5000)), and a credit union organized  
24 under the California Credit Union Law (Division 5 (commencing  
25 with Section 14000)).

26 (c) “Mortgage broker” means a licensed person who provides  
27 mortgage brokerage services. For purposes of this division, a  
28 licensed person who makes home loans is a “mortgage broker,”  
29 and subject to the requirements of this division applicable to  
30 mortgage brokers, only with respect to transactions in which the  
31 licensed person provides mortgage brokerage services.

32 (d) “Mortgage brokerage services” means arranging or  
33 attempting to arrange, as exclusive agent for the borrower or as  
34 dual agent for the borrower and lender, for compensation or in  
35 expectation of compensation, paid directly or indirectly, a  
36 higher-priced mortgage loan made by an unaffiliated third party.

37 SEC. 15. Section 14254.5 of the Financial Code is amended  
38 to read:

39 14254.5. (a) Except as provided in subdivisions (b) and (c),  
40 within 10 business days of opening, closing, or relocating a branch

1 office, a credit union shall notify the commissioner in writing of  
2 the action, including the street and mailing addresses of the branch  
3 office.

4 (b) A credit union shall not establish a branch office in another  
5 state of the United States without the approval of the governmental  
6 authority with jurisdiction to license or charter credit unions in  
7 that state. “State” has the meaning set forth in Section ~~146.7~~ 207.

8 (c) A credit union shall not establish a branch office in a foreign  
9 nation without the prior written approval of the commissioner.  
10 “Foreign nation” has the meaning set forth in Section ~~139.3~~ 175.

11 SEC. 16. Section 14256 of the Financial Code is amended to  
12 read:

13 14256. (a) If any credit union fails to file with the  
14 commissioner any report required by this division on or before the  
15 day designated for the filing of the report or, if the time for filing  
16 the report is extended by the commissioner, within the extended  
17 time, or fails to include in the report any matter required by the  
18 commissioner, the failure is grounds for the suspension or  
19 revocation of the certificate authorizing the credit union to act as  
20 a credit union.

21 (b) If any credit union fails to file with the commissioner any  
22 report required by this division or by any order or regulation of  
23 the commissioner, on or before the day designated for the filing  
24 of the report or, if the time for filing the report is extended by the  
25 commissioner, within the extended time, or fails to include in the  
26 report any matter required by the commissioner, the commissioner  
27 may order the credit union to pay to the commissioner a civil  
28 penalty imposed pursuant to Section ~~216.3~~ 329.

29 SEC. 17. Section 14356 of the Financial Code is amended to  
30 read:

31 14356. All expenses of the department in administering this  
32 division and other laws relating to credit unions or the credit union  
33 business shall be paid out of the Credit Union Fund; and, except  
34 as otherwise provided in Section ~~276~~ 413 or ~~277~~ 414, the Credit  
35 Union Fund shall be used only for such purposes.

36 SEC. 18. Section 22332 of the Financial Code is amended to  
37 read:

38 22332. No licensee shall take any note or promise to pay that  
39 does not accurately disclose the actual amount of the loan, the time  
40 for which it is made, and the agreed rate of charge or the annual

1 percentage rate pursuant to Regulation Z promulgated by the ~~Board~~  
2 ~~of Governors of the Federal Reserve System~~. *Consumer Financial*  
3 *Protection Bureau*.

4 SEC. 19. Section 22337 of the Financial Code is amended to  
5 read:

6 22337. Each licensed finance lender shall:

7 (a) Deliver or cause to be delivered to the borrower, or any one  
8 thereof, at the time the loan is made, a statement showing in clear  
9 and distinct terms the name, address, and license number of the  
10 finance lender and the broker, if any. The statement shall show  
11 the date, amount, and maturity of the loan contract, how and when  
12 repayable, the nature of the security for the loan, if any, and the  
13 agreed rate of charge or the annual percentage rate pursuant to  
14 Regulation Z promulgated by the ~~Board of Governors of the~~  
15 ~~Federal Reserve System~~ *Consumer Financial Protection Bureau*  
16 (12 C.F.R. ~~226~~ 1026).

17 (b) Obtain from the borrower a signed statement as to whether  
18 any person has performed any act as a broker in connection with  
19 the making of the loan. If the statement discloses that a broker or  
20 other person has participated, then the finance lender shall obtain  
21 a full statement of all sums paid or payable to the broker or other  
22 person. The finance lender shall keep these statements for a period  
23 of three years from and after the date the loan has been paid in  
24 full, or has matured according to its terms, or has been charged  
25 off.

26 (c) Permit payment to be made in advance in any amount on  
27 any contract of loan at any time. The licensee may apply the  
28 payment first to any agreed prepayment penalty, then to all charges  
29 due, including charges at the agreed rate or rates up to the date of  
30 payment, not to exceed the applicable maximum rate permitted by  
31 this article.

32 (d) Deliver or cause to be delivered to the person making any  
33 cash payment, or to the person who requests a receipt at the time  
34 of making any payment, at the time payment is made on account  
35 of any loan, a plain and complete receipt showing the total amount  
36 received and identifying the loan contract upon which the payment  
37 is applied.

38 (e) Upon repayment of any loan in full, release all security for  
39 the loan, endorse and return any certificate of ownership, and  
40 cancel or plainly mark “paid” and return to the borrower or person

1 making final payment, any note, mortgage, security agreement,  
2 trust deed, assignment, or order signed by the borrower, or an  
3 optical image reproduction thereof, except those documents that  
4 are a part of the court record in any action, or that have been  
5 delivered to a third person for the purpose of carrying out their  
6 terms, or a security agreement that secures any other indebtedness  
7 of a borrower to the licensee, or original documents otherwise  
8 required by law. When a trust deed on real property has been taken  
9 as security for a loan that has been subsequently paid in full, a duly  
10 executed request for reconveyance shall be delivered to the trustor  
11 or trustee for the purpose of recording a reconveyance. A  
12 termination statement, furnished to the borrower as provided for  
13 in Sections 9512 and 9513 of the Commercial Code, shall be  
14 deemed a release of the security when a financing statement has  
15 been filed pursuant to Section 9501 of the Commercial Code.

16 For purposes of this subdivision, an optical image reproduction  
17 shall meet all of the following requirements:

18 (1) The optical image storage media used to store the document  
19 shall be nonerasable write once, read many (WORM) optical image  
20 media that does not allow changes to the stored document.

21 (2) The optical image reproduction shall be made consistent  
22 with the minimum standards of quality approved by either the  
23 National Institute of Standards and Technology or the Association  
24 for Information and Image Management.

25 (3) Written authentication identifying the optical image  
26 reproduction as an exact unaltered copy of the note, trust deed,  
27 mortgage, security agreement, assignment or order shall be stamped  
28 or printed on the optical image reproduction.

29 (f) Deliver or cause to be delivered to the potential borrower,  
30 or any one thereof, at the time the licensee first requires or accepts  
31 any signed instrument or the payment of any fee, a statement  
32 showing in clear and distinct terms the name, address, and license  
33 number of the finance lender and the broker, if any.

34 SEC. 20. Section 22340.1 of the Financial Code is amended  
35 to read:

36 22340.1. (a) A licensee that is a finance lender may sell to (1)  
37 an institutional lender, or (2) an institutional investor described in  
38 paragraph (6) of subdivision (b) of Section 22340, promissory  
39 notes evidencing the obligation to repay federally related mortgage  
40 loans, as defined in Section ~~3500.2 of Title 24~~ 1024.2 of Title 12

1 of the Code of Federal Regulations, purchased from and made by  
2 an institutional lender, and may make agreements for the collection  
3 of payments and performance of services with respect to those  
4 notes. For purposes of this section, “institutional lender” means  
5 any bank, trust company, savings bank or savings and loan  
6 association, credit union, industrial loan company or residential  
7 mortgage lender doing business under the authority of and in  
8 accordance with a license, certificate or charter issued by the United  
9 States or this state.

10 (b) In the absence of agreement to the contrary by the licensee  
11 and the institutional investor or institutional lender, all payments  
12 received from the collection of payments shall be deposited and  
13 maintained in a trust account, and shall be disbursed from the trust  
14 account only in accordance with the instructions of the owner of  
15 the promissory note.

16 SEC. 21. Section 30005 of the Financial Code is amended to  
17 read:

18 30005. This division does not apply to:

19 (a) A securities depository which is operated by a corporation,  
20 all of the capital stock (other than directors’ qualifying shares, if  
21 any) of which is held by or for a national securities exchange or  
22 association registered under a statute of the United States such as  
23 the Securities Exchange Act of 1934, or by a corporation all of the  
24 capital stock (other than directors’ qualifying shares, if any) of  
25 which is held by or for such a wholly owned subsidiary of a  
26 registered national securities exchange.

27 (b) A securities depository which is registered with the Securities  
28 and Exchange Commission pursuant to any provision of federal  
29 law or which is regulated by the Comptroller of the Currency, the  
30 Federal Reserve Board, or the Federal Deposit Insurance  
31 Corporation pursuant to any provision of federal law, or which is  
32 regulated by the Commissioner of Business Oversight under  
33 Division 1.1 (commencing with Section 1000) of the Financial  
34 Code.

35 SEC. 22. Section 50003 of the Financial Code is amended to  
36 read:

37 50003. (a) “Annual audit” means a certified audit of the  
38 licensee’s books, records, and systems of internal control performed  
39 by an independent certified public accountant in accordance with

1 generally accepted accounting principles and generally accepted  
2 auditing standards.

3 (b) “Borrower” means the loan applicant.

4 (c) “Buy” includes exchange, offer to buy, or solicitation to  
5 buy.

6 (d) “Commissioner” means the Commissioner of Business  
7 Oversight.

8 (e) “Control” means the possession, directly or indirectly, of  
9 the power to direct, or cause the direction of, the management and  
10 policies of a licensee under this division, whether through voting  
11 or through the ownership of voting power of an entity that  
12 possesses voting power of the licensee, or otherwise. Control is  
13 presumed to exist if a person, directly or indirectly, owns, controls,  
14 or holds 10 percent or more of the voting power of a licensee or  
15 of an entity that owns, controls, or holds, with power to vote, 10  
16 percent or more of the voting power of a licensee. No person shall  
17 be deemed to control a licensee solely by reason of his or her status  
18 as an officer or director of the licensee.

19 (f) “Depository institution” has the same meaning as in Section  
20 3 of the Federal Deposit Insurance Act, and includes any credit  
21 union.

22 (g) “Engage in the business” means the dissemination to the  
23 public, or any part of the public, by means of written, printed, or  
24 electronic communication or any communication by means of  
25 recorded telephone messages or spoken on radio, television, or  
26 similar communications media, of any information relating to the  
27 making of residential mortgage loans, the servicing of residential  
28 mortgage loans, or both. “Engage in the business” also means,  
29 without limitation, making residential mortgage loans or servicing  
30 residential mortgage loans, or both.

31 (h) “Federal banking agencies” means the Board of Governors  
32 of the Federal Reserve System, the Comptroller of the Currency,  
33 the National Credit Union Administration, and the Federal Deposit  
34 Insurance Corporation.

35 (i) “In this state” includes any activity of a person relating to  
36 making or servicing a residential mortgage loan that originates  
37 from this state and is directed to persons outside this state, or that  
38 originates from outside this state and is directed to persons inside  
39 this state, or that originates inside this state and is directed to  
40 persons inside this state, or that leads to the formation of a contract

1 and the offer or acceptance thereof is directed to a person in this  
2 state (whether from inside or outside this state and whether the  
3 offer was made inside or outside the state).

4 (j) “Institutional investor” means the following:

5 (1) The United States or any state, district, territory, or  
6 commonwealth thereof, or any city, county, city and county, public  
7 district, public authority, public corporation, public entity, or  
8 political subdivision of a state, district, territory, or commonwealth  
9 of the United States, or any agency or other instrumentality of any  
10 one or more of the foregoing, including, by way of example, the  
11 Federal National Mortgage Association and the Federal Home  
12 Loan Mortgage Corporation.

13 (2) Any bank, trust company, savings bank or savings and loan  
14 association, credit union, industrial bank or industrial loan  
15 company, personal property broker, consumer finance lender,  
16 commercial finance lender, or insurance company, or subsidiary  
17 or affiliate of one of the preceding entities, doing business under  
18 the authority of or in accordance with a license, certificate, or  
19 charter issued by the United States or any state, district, territory,  
20 or commonwealth of the United States.

21 (3) Trustees of pension, profit-sharing, or welfare funds, if the  
22 pension, profit-sharing, or welfare fund has a net worth of not less  
23 than fifteen million dollars (\$15,000,000), except pension,  
24 profit-sharing, or welfare funds of a licensee or its affiliate,  
25 self-employed individual retirement plans, or individual retirement  
26 accounts.

27 (4) A corporation or other entity with outstanding securities  
28 registered under Section 12 of the federal Securities Exchange Act  
29 of 1934 or a wholly owned subsidiary of that corporation or entity,  
30 provided that the purchaser represents either of the following:

31 (A) That it is purchasing for its own account for investment and  
32 not with a view to, or for sale in connection with, any distribution  
33 of a promissory note.

34 (B) That it is purchasing for resale pursuant to an exemption  
35 under Rule 144A (17 C.F.R. 230.144A) of the Securities and  
36 Exchange Commission.

37 (5) An investment company registered under the Investment  
38 Company Act of 1940; or a wholly owned and controlled subsidiary  
39 of that company, provided that the purchaser makes either of the  
40 representations provided in paragraph (4).

1 (6) A residential mortgage lender or servicer licensed to make  
2 residential mortgage loans under this law or an affiliate or  
3 subsidiary of that person.

4 (7) Any person who is licensed as a securities broker or  
5 securities dealer under any law of this state, or of the United States,  
6 or any employee, officer, or agent of that person, if that person is  
7 acting within the scope of authority granted by that license or an  
8 affiliate or subsidiary controlled by that broker or dealer, in  
9 connection with a transaction involving the offer, sale, purchase,  
10 or exchange of one or more promissory notes secured directly or  
11 indirectly by liens on real property or a security representing an  
12 ownership interest in a pool of promissory notes secured directly  
13 or indirectly by liens on real property, and the offer and sale of  
14 those securities is qualified under the California Corporate  
15 Securities Law of 1968 or registered under federal securities laws,  
16 or exempt from qualification or registration.

17 (8) A licensed real estate broker selling the loan to an  
18 institutional investor specified in paragraphs (1) to (7), inclusive,  
19 or paragraph (9) or (10).

20 (9) A business development company as defined in Section  
21 2(a)(48) of the Investment Company Act of 1940 or a small  
22 business investment company licensed by the United States Small  
23 Business Administration under Section 301(c) or (d) of the Small  
24 Business Investment Act of 1958.

25 (10) A syndication or other combination of any of the foregoing  
26 entities that is organized to purchase a promissory note.

27 (11) A trust or other business entity established by an  
28 institutional investor for the purpose of issuing or facilitating the  
29 issuance of securities representing undivided interests in, or rights  
30 to receive payments from or to receive payments primarily from,  
31 a pool of financial assets held by the trust or business entity,  
32 provided that all of the following apply:

33 (A) The business entity is not a sole proprietorship.

34 (B) The pool of assets consists of one or more of the following:

35 (i) Interest-bearing obligations.

36 (ii) Other contractual obligations representing the right to receive  
37 payments from the assets.

38 (iii) Surety bonds, insurance policies, letters of credit, or other  
39 instruments providing credit enhancement for the assets.

40 (C) The securities will be either one of the following:

(i) Rated as “investment grade” by Standard and Poor’s Corporation or Moody’s Investors Service, Inc. “Investment grade” means that the securities will be rated by Standard and Poor’s Corporation as AAA, AA, A, or BBB or by Moody’s Investors Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings with “+” or “—” designation or other variations that occur within those ratings.

(ii) Sold to an institutional investor.

(D) The offer and sale of the securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(k) “Institutional lender” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(4) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law.

(l) “Law” means the California Residential Mortgage Lending Act.

(m) “Lender” means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential

1 mortgage loans, and (3) makes the credit decision in the loan  
2 transactions.

3 (n) “Licensee” means, depending on the context, a person  
4 licensed under Chapter 2 (commencing with Section 50120),  
5 Chapter 3 (commencing with Section 50130), or Chapter 3.5  
6 (commencing with Section 50140).

7 (o) “Makes or making residential mortgage loans” or “mortgage  
8 lending” means processing, underwriting, or as a lender using or  
9 advancing one’s own funds, or making a commitment to advance  
10 one’s own funds, to a loan applicant for a residential mortgage  
11 loan.

12 (p) “Mortgage loan,” “residential mortgage loan,” or “home  
13 mortgage loan” means a federally related mortgage loan as defined  
14 in ~~Section 3500.2 of Title 24~~ *1024.2 of Title 12* of the Code of  
15 Federal Regulations, or a loan made to finance construction of a  
16 one-to-four family dwelling.

17 (q) “Mortgage servicer” or “residential mortgage loan servicer”  
18 means a person that (1) is an approved servicer for the Federal  
19 Housing Administration, Veterans Administration, Farmers Home  
20 Administration, Government National Mortgage Association,  
21 Federal National Mortgage Association, or Federal Home Loan  
22 Mortgage Corporation, and (2) directly services or offers to service  
23 mortgage loans.

24 (r) “Nationwide Mortgage Licensing System and Registry”  
25 means a mortgage licensing system developed and maintained by  
26 the Conference of State Bank Supervisors and the American  
27 Association of Residential Mortgage Regulators for the licensing  
28 and registration of licensed mortgage loan originators.

29 (s) “Net worth” has the meaning set forth in Section 50201.

30 (t) “Own funds” means (1) cash, corporate capital, or warehouse  
31 credit lines at commercial banks, savings banks, savings and loan  
32 associations, industrial loan companies, or other sources that are  
33 liability items on a lender’s financial statements, whether secured  
34 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,  
35 or warehouse credit lines at commercial banks or other sources  
36 that are liability items on the affiliate’s financial statements,  
37 whether secured or unsecured. “Own funds” does not include funds  
38 provided by a third party to fund a loan on condition that the third  
39 party will subsequently purchase or accept an assignment of that  
40 loan.

1 (u) “Person” means a natural person, a sole proprietorship, a  
2 corporation, a partnership, a limited liability company, an  
3 association, a trust, a joint venture, an unincorporated organization,  
4 a joint stock company, a government or a political subdivision of  
5 a government, and any other entity.

6 (v) “Residential real property” or “residential real estate” means  
7 real property located in this state that is improved by a one-to-four  
8 family dwelling.

9 (w) “SAFE Act” means the federal Secure and Fair Enforcement  
10 for Mortgage Licensing Act of 2008 (Public Law 110-289).

11 (x) “Service” or “servicing” means receiving more than three  
12 installment payments of principal, interest, or other amounts placed  
13 in escrow, pursuant to the terms of a mortgage loan and performing  
14 services by a licensee relating to that receipt or the enforcement  
15 of its receipt, on behalf of the holder of the note evidencing that  
16 loan.

17 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.

18 (z) “Unique identifier” means a number or other identifier  
19 assigned by protocols established by the Nationwide Mortgage  
20 Licensing System and Registry.

21 (aa) For purposes of Sections 50142, 50143, and 50145,  
22 “nontraditional mortgage product” means any mortgage product  
23 other than a 30-year fixed rate mortgage.

24 (ab) For purposes of Section 50141, “expungement” means the  
25 subsequent order under the provisions of Section 1203.4 of the  
26 Penal Code allowing such individual to withdraw his or her plea  
27 of guilty and to enter a plea of not guilty, or setting aside the verdict  
28 of guilty or dismissing the accusation, information, or indictment.  
29 With respect to criminal convictions in another state, that state’s  
30 definition of expungement will apply.